IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

CRL.A.No. 330 of 2005()

SC.202/2002 of ADDL. SESSIONS COURT (ADHOC), TRIVANDRUM
CP.121/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEDUMANGAD
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APPELLANTS: ACCUSED 1 AND 2.
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1. KRISHNANKUTTY @ KOKKO KRISHNAN,
S/O. PONNU NADAR, ATTARIKATHU VEEDU,
MAVUNINNAKUZHY, KOTTAKKAKAM MURI, ARYANADU VILLAGE

2. SURENDRAN @ PETTI SUREN,
S/O. NARAYANAN, MARUTHUVILAKATHU VEEDU,
NO.A.P.VIII/614, HOUSING NOARD, KOTTAKKAKAM MURI,
ARYANADU VILLAGE.

BY ADV. SRI.M.RAJAGOPALAN NAIR
SRI.G.BIJU

RESPONDENT: COMPLAINANT.

STATE OF KERALA - REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.PADMANABHAN NAIR, JJ.

CRL.APPEAL.NO.330 OF 2005 ()

Dated this the 12th day of December, 2006

J U D G M E N T

PADMANABHAN NAIR, J.

Accused 1 and 2 in S.C.No.202/2002 on the file of the Additional Sessions Judge (Fast Track Court-I), Thiruvananthapuram are the appellants. They have filed this appeal challenging the conviction and sentence imposed on them under Sections 302 and 201 read with Section 34 of the Indian Penal Code. Sessions Judge found appellants guilty of offences punishable under Section 302 read with 34 of I.P.C., convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.25,000/- each. In default of payment of fine they were directed to undergo rigorous imprisonment for two years each. They were also found guilty of the offences punishable under Section 201 read with 34 of I.P.C., convicted and sentenced to undergo rigorous imprisonment for two years each and to pay a fine of Rs.5,000/- each. In default of

payment of fine they were directed to undergo rigorous imprisonment for three months each.

2. Prosecution case is as follows: Deceased Raveendran as well as five accused involved in this case were persons who were eking their livelihood by distilling of illicit arrack. Deceased Raveendran used to commit theft of wash stored in tanks by accused. They became inimical and formed themselves into an unlawful assembly at about 5.30 p.m. on 29.10.1998 armed with deadly weapons like fire wood at river purampokku on western side of a rubber estate belonging to one Sulochana. On that day A2 to A4 were engaged in the process of manufacturing illicit liquor. Deceased came there before 2 p.m. A2 to A4 asked him to sit there and he was given food. At about 5.30 p.m. the 1st appellant who was the 1st accused came there. He questioned A2 to A4 why the deceased who committed theft of wash was allowed to sit there. Deceased uttered obscene words against A1. A1 beat Raveendran with a piece of fire wood which was a weapon of

dangerous nature. Raveendran fell down and became unconscious. Accused called him. But he did not respond. They were under the impression that Raveendran had passed away. They concealed his dead body in the nearby bushes and informed A5. On the next day at about 12 noon all accused together tied both hands and legs of Raveendran to a trunk of tree which was submerged at the bottom of Karamana river. Raveendran died due to drowning.

3. PW1, son of deceased Raveendran gave Ext.P1 F.I.Statement before PW29, Head Constable of the Aryanad police station at about 11.30 a.m. on 9.11.1998. He stated that Raveendran was missing from 29.10.1998 at 8.30 a.m. onwards. Based on Ext.P1 F.I.Statement PW29 registered Ext.P1(a) F.I.R. as Crime No.313/98 under the caption “man missing”. Subsequently investigation was taken over by PW30, Assistant Sub Inspector. He questioned witnesses and took their statements. Thereafter investigation was taken over by PW32, Circle Inspector of Police on 8.3.1999. He questioned

witnesses. On 17.3.1999 he arrested all accused from the house of A5. They confessed on having committed the offence. Based on the information furnished by A2 that fire wood used by A1 for beating Raveendran was thrown by him in a rubber estate, a search was conducted and MO3 firewood was seized under Ext.P18 seizure mahazar. Further case of prosecution was that A1 and A5 confessed for having taken the dead body of Raveendran and trying same to the trunk of a tree which was sub merged at bottom of river. The tree trunk could not be seized. In the meanwhile, one Surendran Nair gave Ext.P22 F.I.statement before Sub Inspector of Police, Aryanad Police station, at 8 p.m. On 4.3.1999. It was stated that he saw a deadbody of a person floating in the Karamana river. Based on Ext.P22 Statement Ext.P22 (a) F.I.R. was registered. The deadbody was taken out of water. On 5.3.1999 PW2 conducted inquest on the deadbody. Thereafter PW18 doctor conducted post mortem examination and issued Ext.P12 Post Mortem certificate. Superimposition technique was adopted. A part of investigation was conducted by PW32 and PW33.

Investigation was completed by PW36, Assistant Superintendent of Police. PW34 filed the final report. The accused were arrested and subsequently released on bail. The learned Magistrate committed the case to the court of Sessions after observing formalities. Learned Sessions Judge made over this case to Additional Sessions Judge for trial. When the appellant and other accused appeared before the learned Sessions Judge, charges under Sections 143, 147, 148, 201 and 302 read with 149 of I.P.C. were framed after hearing both sides. Charges were read over and explained to accused. They pleaded not guilty.

4. On the side of the prosecution, PWs.1 to 36 were examined, Exts.P1 to P27 proved and marked and MOs.1 to 7 identified. After the prosecution evidence was over, accused were questioned under Section 313 of the Criminal Procedure Code. They denied all allegations levelled against them. Since no grounds were made out to acquit accused under Section 232 of Cr.P.C., they were called upon to enter on into their

defence. DW1 was examined and Exts.D1 to D5 series proved and marked. When the case was posted for defense evidence, a report was submitted by the counsel for the 3rd accused stating that 3rd accused died on 8.11.2004. The police after verification submitted that A3 died on 8.11.2004. So charges against A3 abated. Learned Sessions Judge found A1 and A2 guilty of the offence punishable under Sections 302 and 201 read with Section 34 of the I.P.C. All accused were found not guilty of the offences under Section 143, 147, 148 and 149 and acquitted.

5. Heard Sri.M.Rajagopalan Nair counsel for the appellants and Sri.K.C.Santhosh Kumar, Public Prosecutor.

6. The learned counsel appearing for the appellants has argued that there is absolutely no evidence to support the findings of the court below that appellants are guilty of the offences punishable under Section 302 and 201 of I.P.C. read with 34 of I.P.C. It is argued that there is no convincing

evidence to show that Raveendran died at 5.30 p.m. on 29.10.1998. It is argued that even according to the prosecution, Raveendran died not because of any injuries sustained by him but because of drowning. It is argued that in absence of any material to hold that the appellants applied force to keep the body of Raveendran under water so as to cause suffocation the appellants cannot be convicted for the offence punishable under Section 302. It is argued that even accepting the entire prosecution case as such no offence under Section 302 of I.P.C. is made out in this case. It is pointed out that the prosecution case was when deceased came to the place of occurrence A1 and A5 were not there. The other accused gave deceased food and while Raveendran was taking food A1 came there. A1 questioned accused nos.2 to 4 why they served food to a person who was steeling their wash. The deceased called A1 names. A1 took out a fire wood lying there and beat Raveendran. A1 to A4 tried to wake him up. There was no respondence. Accused assumed that Raveendran passed away. They concealed the deadbody

among the bush and on the next day tied the same to the trunk of submerged timber piece. He fell unconscious. It is also argued that there is no evidence to hold that deceased was last seen in the company of the accused. It is argued that it is a case which the prosecution attempted to prove by direct evidence. It is argued that if the prosecution wanted to prove the guilty of accused by adducing direct evidence thereafter the accused cannot be convicted relying on circumstantial evidence. Prosecution case is that deceased Raveendran told his family members that he was going for manual labour left his house at about 8.30 a.m. on 29.10.1998. Ext.P1 F.I.statement was recorded at 11.30 a.m. on 9.11.1998. In Ext.P1 also it was stated that deceased left the house at 8.30 a.m. on 29.10.1998 stating that he is going to do manual labour. On 4.3.1999 the deadbody was found floating in the Karamana river. The deadbody was completely decomposed and beyond recognition. A crime was registered under the caption “man missing”. Ext.P2 inquest was conducted on 5.3.1999. The son of the deceased identified dead body as that of Raveendran.

Thereafter post mortem examination was conducted. Ext.P12 is the post mortem certificate. The following injuries were noted by PW18, in Ext.P12 post mortem certificate. PW18 proved the post mortem certificate also. The following were the findings:

> "Body was that of an adult male in a state of advanced decomposition. Both forearms, hands and feet were missing without any infiltration of blood around. The available portion measured 157 cm in length and 46 kgm in weight. Head, both arms and legs were completely skeletonised with adipocere formation on the trunk and thighs. Eyeballs were softened, glabella and superciliary ridges were prominent. Frontonasal junction was distinct with rounded orbital margins. The zygoma and mastoid processes were prominent with deep digastric grooves. The chin was square in shape with everted angles. The ental formula was as follows:-

--	17	16	15	--	--	--	--	|	--	--	--	24	25	26	27	28
38	37	36	35	34	33	32	31	|	41	42	43	44	45	--	47	48

> The teeth showed moderate periodontosis with brownish stains on the inner aspect and were loose. The sockets of left upper central incisor and that of first molar on left lower quadrant were completely resorbed. The other empty sockets showed postmortem loss of teeth. The sagittal and coronal sutures fused completely internally but externally their fusion was not complete. Xiphisternum fused with the

body and manubrium has not fused. A few black hairs 3 – 4 cm in length were present on the public region and were loose. External genitalia was missing and the surrounding tissues did not show any infiltration of blood. The pelvic cavity was deep with narrow inlet and outlet. The curvature of sacrum was uniform and greater sciatic notch and subpubic angle were acute (Body was not kept in cold room).

Antemorem injuries to soft tissues if any, could not be detected due to decomposition changes. No injury was noted to the available bones.

The skull was intact and the brain was in a liquified stage having passages including hyoid bone were missing. The air passages contained fine sand articles in the major divisions with decomposition of its mucosa. The chest cavities contained 30ml of thick, brownish fluid on each side. Lungs were dark, soft and pulpy. Stomach was empty without any peculiar smell, mucosa decomposed. All other internal organs were in an advanced state of decomposition. Viscera and long bone (as requested by the investigating officer) have been preserved and sent for chemical analysis. Tissue bits and water sample were also forwarded to the Chemical examiner's Laboratory for doing diatom test. Tooth Nos.(31) and (41) were subjected to Gustafson's technique of age determination and the age could be 47± 5 years. The skull and mandible have been forwarded to the Forensic Science Laboratory for superimposition technique as requested by the investigating officer."

PW18 opined that death might have occurred between three weeks and three months prior to the date of the post mortem

examination. Cause of death was stated as drowning. Prosecution case was that the victim was missing from 29.10.1998 onwards. Identity of the deadbody as that of Raveendran was satisfactorily established by Superimposition. Ext.P15 and P16 series are prints and negatives of the photos taken after superimposition. From the medical evidence alone it is not possible to held that it was a case of homicide.

7. There is no eye witness to the entire incident. According to prosecution, PW3 had seen a part of incident and PWs.7 and 8 saw deceased in the company of accused and that will show that it was the accused who murdered Raveendran. PW7 deposed that at about 2 p.m. on 29.10.1998 he along with his uncle Chellan and Ratheesh went to forest for cutting timber for repairing house. On their way back he saw deceased and four persons sitting together. Chellan asked them whether it was possible to give him some arrack. They did not say anything. According to him, the persons found there was A1 to A4. Admittedly A5 was not

there at that time. Raveendran and acused were chatting and appeared to be in cordial terms. During cross examination he had admitted that he was questioned by police about six months after death of Raveendran. Evidence shows that he was not capable of speaking about various months in Malayalam or English calender. According to him he along with others were walking along the opposite side of the river when accused and deceased were sitting. Width of the river at that place was more than 30 metres. PW7 further stated that on the next day itself he told the wife and children of Raveendran that he saw Raveendran in the company of accused. But he had not inform the police. It is also very pertinent that Ext.P1 F.I.Statement was given by the son of the deceased only on 9.11.1998 and on that day he did not say anything about the information given to him by PW7.

8. According to the prosecution PWs.7 and 8 came together. PW8 also deposed that he had seen deceased along with the company of accused Nos.1 to 4. He saw the deceased

on 29.9. but he did not remember the year. He also deposed that he had seen four persons. He also deposed that on the third day he informed wife and children of missing person about the fact that he had seen Raveendran in the company of A1 to A4. According to him he was questioned by police about two months after date of occurrence and again questioned after a lapse of about three months. But on 5.3.1994 the police had no information regarding the story spoken to by PWs.7 and 8. PW7 had admitted that his eye sight was very poor. He admitted that he went to forest for committing theft of timber and normally he will not go to forest for committing theft during day time. He admitted that the names of the accused were told by him as requested by the children of deceased. He had admitted that on the previous day of his examination he came to court along with son of deceased and Aryanad Police tutored him. When he was cross examined with permission he was unable to read the date looking into calender or time shown in the clock fixed on the wall of the court hall as his eye sight was poor. So no reliance can be

placed on the evidence of PWs.7 and 8. We disbelieve their evidence. Even if their evidence is accepted the same is not sufficient to convict the appellants. According to PWs.7 and 8 they saw deceased and A1 to A4 sitting together at 2 p.m. PW3 deposed that he had seen deceased alive at 5.30 p.m. on that day. PW3 deposed that he had seen the deceased along with accused Nos.1 to 4 at about 5.30 p.m. on 29.10.1998. PW3 was attending the call of nature. He heard somebody calling names and looked towards the direction from where sound came. Then he saw accused and deceased on the opposite side of river. He deposed that A1 bet Raveendran and he fell down. PW3 also deposed that others asked Raveendran to get up. But he did not get up. So PW3 suspected some foul play and left the place immediately. According to him all the five accused were there. During cross examination he had admitted that the Circle Inspector conducted search in his property and questioned him. But he did not disclose anything about the incident which he had seen to anybody including Circle Inspector of Police. PW3 had

deposed that there was a rumor that deceased was kept away by his family members. He deposed that he was called to the police station. At that time one police constable by name Basukutty asked him to divulge any information he knows about the missing man. So he went to the Circle Inspector and gave the details. He had admitted that the Circle Inspector asked him to say the names of five accused. Evidence of PW3 shows that distance between the place of occurrence and the place where he was standing was more than 50 metres. During cross examination he deposed that he was going to another place to seek the assistance of one Narayanan for retrieving timber from river. But he did not state that fact to the police. He had also admitted that normally it was not necessary for him to go to that place and he happened to be there only because he was passing through that place. The details given by PW3 about the person whom he wanted to meet shows that he was not speaking truth. Evidence of PW3 appears to be highly artificial especially his conduct in not disclosing the names of the assailants to the relatives of deceased or to the

police immediately after the incident. So no reliance can be placed on the evidence of PW3 also. It is not possible to hold that deceased was seen last in the company of accused by PW3 at about 5.30 p.m. on 29.10.1998. It is not possible to convict the appellants based on the uncorroborated testimony of PW3 alone.

9. Apart from the evidence of PW3 the only other piece of evidence relied on by the prosecution is the recovery of MO3 firewood. Prosecution case was that it was A1 who bet deceased with MO3. But the same was recovered in pursuance of the information furnished by 2nd accused. Ownership of concealment was also proved. Learned Public Prosecutor has argued that even assuming that recovery of MO3 cannot be considered as a recovery contemplated under Section 27 of the Evidence Act the fact that accused pointed out the place to police from where MO3 was recovered is a relevant fact admissible under Section 8 of the Evidence Act. The seizure of MO3 alone is not sufficient to convict the accused. So finding

of learned Sessions Judge that appellants are guilty of the offences under Sections 302 and 201 read with 34 of the Indian Penal Code are unsustainable and liable to be set aside. We do so.

In the result the Crl.Appeal is allowed. Conviction and sentence imposed on the appellants under Sections 302 and 201 of the Indian Penal Code are hereby set aside. They are found not guilty of those offences and acquitted. Fine, if any, paid by them shall be refunded. They shall be released from jail forthwith if their continued detention is not required in connection with any other case.

J.B.KOSHY, JUDGE

K.PADMANABHAN NAIR, JUDGE

prp

J.B.KOSHY & K.PADMANABHAN NAIR, JJ.

O.P.NO. OF 2006 ()

J U D G M E N T

17th November, 2006